MONTANA LEGISLATIVE HISTORY

Chapter 675 1979

Bill H 851 S _____ Original bill & history ____C

H. Committee on Local Govermnt			S. Committee on Local Govermnt		
Hearing Date(s)	Feb 19	✓ C	Hearing Date(s)	Mar 20	✓ C
	_____	____C		Mar 21	✓ C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	_____	____C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

House BILL NO. 851

INTRODUCED BY Walker, Walker, Richard H Robbins, Azzara, Boharski, Palma, Watt, Rasmussen, Mikell, Donaldson

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE PROCEDURES FOR ALTERATION OF EXISTING FORMS OF LOCAL GOVERNMENT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. The purpose of [this act] is to provide procedures for alteration of existing forms of local government.

Section 2. Definitions. As used in [this act], unless the context indicates otherwise, the following definitions apply:

(1) "Authority" means:

(a) a municipal or regional airport authority as provided in Title 67, chapter 11;

(b) a conservancy district as provided in Title 85, chapter 9;

(c) a conservation district as provided in Title 76, chapter 15;

(d) a drainage district as provided in Title 85, chapter 8;

(e) an irrigation district as provided in Title 85, chapter 7;

(f) a hospital district as provided in Title 7, chapter 34, part 21;

(g) a flood control and water conservation district as provided in Title 76, chapter 5, part 11;

(h) a county water and sewer district as provided in Title 7, chapter 13, part 22; or

(i) an urban transportation district as provided in Title 7, chapter 14, part 2.

(2) "Finance administrator" means the individual responsible for the financial administration of the local government and generally means the county or city treasurer or town clerk unless the alternative form or governing body specifies a different individual.

(3) "Governing body" means the commission or the town meeting legislative body established in the alternative form of a local government under Title 7, chapter 3, parts 1 through 6.

(4) "Local improvement district" means an improvement district in which property is assessed to pay for specific capital improvements benefiting the assessed property.

(5) "Records administrator" means the individual responsible for keeping the public records of the local government and generally means the county, city, or town clerk unless the alternative form or governing body specifies a different individual.

(6) "Subordinate service district" means a special

district within a local government in which certain services are provided and in which taxes may be levied to finance the services.

Section 3. Alteration of existing forms of local government. An alteration of an existing form of local government may be proposed by:

(1) a petition of the electors; or

(2) a resolution of the governing body.

Section 4. Election procedure. Except as otherwise provided in [this act], each election under [this act] is conducted in the same manner as an election involving ballot issues or of local officials.

Section 5. Petition for alteration. (1) A petition for the alteration of an existing form of local government may be presented to the governing body of the local government. The petition must meet the requirements of [sections 8 through 11].

(2) The petition must be signed by a least 15% of the electors of the local government, and upon receipt of the petition the governing body shall call an election, as provided for in [sections 15 through 17], on the proposed alteration.

Section 6. Resolution for alteration. A governing body of a local government may by resolution submit to the electors of the local government a question on the

alteration of the existing form of the local government. The resolution must meet the requirements of [sections 8 through 11].

Section 7. Permissible recommendations. (1) A petition or resolution proposing to alter an existing form of county government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(c) draft a charter;

(d) recommend municipal-county consolidation or amendments to an existing consolidation; or

(e) in cooperation with a study commission in an adjoining county, recommend county merger.

(2) A petition or resolution proposing to alter an existing form of municipal government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 7;

(c) draft a charter; or

(d) recommend disincorporation.

Section 8. Requirements for petition or resolution. A petition or resolution proposing an alteration of an

existing form of local government must contain:

(1) a certificate containing the "plan of government" of the existing form of local government;

(2) a certificate containing the "plan of government" of the proposed new form of local government or amendments to the existing plan;

(3) a certificate containing the "plan of apportionment" of commissioner districts if districts are contained in the "plan of government";

(4) a certificate establishing the date of the special election at which the alternative form of government shall be presented to the electors and a certificate establishing the form of the ballot question or questions;

(5) a certificate establishing the dates of the first primary and general elections if the proposal is approved and establishing the effective date of the proposal if approved; and

(6) a comparison of the existing plan and proposed plan of local government, including, if desired, a statement of the strengths and weaknesses of the existing and proposed plans of local government, information that supports the adoption of the proposed plan, and information that supports retention of the present plan.

Section 9. Special requirements if consolidation recommended. (1) Whenever county-municipal consolidation is

recommended, a petition or resolution, in addition to the material required in [section 8], must contain a consolidation plan which:

(a) provides for adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service;

(b) provides for establishment of subordinate service districts;

(c) provides for the transfer or other disposition of property and other rights, claims, assets, and franchises of the local governments consolidated under its proposal;

(d) provides the official name of the consolidated local government; and

(e) (i) provides for the transfer, reorganization, abolition, adjustment of boundaries, or absorption of existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and nonconsolidated municipalities; or

(ii) grants the legislative body of the consolidated government the authority to transfer, reorganize, abolish, adjust boundaries, or absorb existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and nonconsolidated

HB 851

municipalities, with or without referendum requirements.

(2) The consolidation plan may include other provisions that are consistent with state law.

(3) Whenever amendments to an existing consolidation plan are recommended, a petition or resolution must contain a certificate containing amendments to the consolidation plan.

Section 10. Special requirements if county merger recommended. (1) Whenever county merger is recommended, a petition or resolution, in addition to the material required by [section 8], must contain a consolidation plan which:

(a) provides for adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service;

(b) provides for establishment of subordinate service districts;

(c) provides for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative plan;

(d) provides the official name of the consolidated local government; and

(e) (i) provides for the transfer, reorganization, abolition, adjustment of boundaries, or absorption of existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions

of the consolidated governments, excluding school districts, authorities, and incorporated municipalities; or

(ii) grants the legislative body of the consolidated government the authority to transfer, reorganize, abolish, adjust boundaries, or absorb existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and incorporated municipalities, with or without referendum requirements.

(2) The consolidation plan may include other provisions that are consistent with state law.

Section 11. Special requirements if municipal disincorporation recommended. Whenever municipal disincorporation is recommended, a petition or resolution, in addition to the material required by [section 8], must contain:

(1) a certificate of disincorporation instead of a plan of government; and

(2) a recommended plan of disincorporation.

Section 12. Filing of petitions and resolutions. (1) Two copies of a petition or a resolution shall be filed with the department of community affairs.

(2) One copy of a petition or resolution shall be filed with the local government records administrator.

(3) The filings required by this section shall be done

within 30 days of adoption of a resolution and within 45 days of submission of a petition.

Section 13. Availability of petitions and resolutions. (1) Sufficient copies of a petition or resolution proposing alterations to an existing form of local government must be made available to the public for inspection at convenient locations and at reasonable hours to provide all interested persons an opportunity to review the recommendations and documents. The copies must be available no later than 30 days prior to an election on the recommendations if such an election is to be held. The local government may distribute copies of a petition or resolution to the electors or residents of the local government.

(2) The cost of preparing the copies needed to meet the requirements of this section shall be borne by the affected local government.

Section 14. Publication of summary and comparison. (1) A summary of the recommendations contained in a petition or resolution proposing alteration of an existing form of local government must be published at least twice in a newspaper of general circulation in the local government. Whenever an election on the recommendations is to be held, publication must be made during the 2 weeks preceding the election.

(2) The summary must contain a description of the recommendations, a comparison of the existing and proposed

forms of government, and a list of locations where the full proposal may be seen or obtained.

(3) The cost of publication required by this section shall be borne by the affected local government.

Section 15. Election on alternative form. (1) The governing body shall call a special election on the question of an alternative form of government to be held within 120 days of the date of filing with the records administrator under [section 12]. The special election may be held in conjuction with any other election. The records administrator shall prepare and print notices of the special election.

(2) The cost of the election shall be paid for by the local government.

(3) (a) The affirmative vote of a simple majority of those voting on the question is required for adoption.

(b) In any election involving the question of consolidation, each question shall be submitted to the electors in the county and requires an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There is no requirement for separate majorities in local governments voting on consolidation.

(c) In any election involving the question of county merger, the questions shall be submitted to the electors in the counties affected and requires a majority of the votes

HB 851

cast on the questions in each affected county for adoption.

(d) If the electors disapprove the proposed new form of local government, amendments, or consolidation plan, the local government retains its existing form.

Section 16. General ballot requirements. (1) The question of adopting an alteration of an existing form of government proposed by petition or resolution shall be submitted to the electors in substantially the following form:

Vote for one:

☐ FOR adoption of the (self-government charter, amendment to an existing charter, or plan of government) proposed for (insert name of local government) proposed by (petition of the people or resolution of the governing body).

☐ FOR the existing form of government.

(2) The whole number of ballots shall be divided into two equal sets. No more than one set may be used in printing the ballot for use in any one precinct and all ballots furnished for use in one precinct shall be identical. The existing plan of government shall be printed as the first item and the proposed plan as the second item on half of the ballots and the proposed form as the first item and the existing form as the second item on the other half of the ballots. If the local government consists of

only one precinct, the existing plan shall be listed first on the ballot.

Section 17. Treatment of suboptions for alternative forms. (1) No petition or resolution recommendation may involve more than three separate suboptions, and no suboption may contain more than two alternatives. If a suboption is submitted to the voters, only the ballot alternatives within that suboption receiving the highest number of affirmative votes are considered approved and included in the alternative form of government.

(2) A proposed plan shall be submitted to the voters as a single question, except that the suboptions within the alternative plan of local government authorized in Title 7, chapter 3, parts 1 through 7, and the suboptions authorized in a charter may be submitted to the electors as separate questions. The question of adopting a suboption shall be submitted to the electors in substantially the following form:

Vote for one:

A legal officer (who may be called the "county attorney"):

☐ Shall be elected for a term of 4 years.

☐ Shall be appointed for a term of 4 years by the chairman of the local governing body.

Section 18. Effect of adoption of new form of

government. The adoption of a new plan of government does not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government.

Section 19. Filing of approved plan. (1) A copy of the existing or proposed plan of government ratified by the voters and any apportionment plan or consolidation or merger plan shall be certified by the chairman of the governing body and filed with the department of community affairs, the county records administrator, and the municipal records administrator if it is a municipal plan.

(2) The approved plan filed with the department of community affairs is the official plan and is a public record open to inspection by the public and judicially noticeable by all courts.

Section 20. Judicial review. Judicial review to determine the validity of the procedures whereby any charter or alternative plan of government is adopted may be initiated by petition in district court of 10 or more registered voters of the local government brought within 60 days after the election at which the charter or plan of government, revision, or amendment is approved. If no petition is filed within that period, compliance with all the procedures required by [this act] and the validity of the manner in which the charter or plan of government was

approved is conclusively presumed. It is presumed that proper procedure was followed and all procedural requirements were met. The adoption of a charter or plan of government may not be considered invalid because of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption.

Section 21. Three-year moratorium. Unless the constitution requires otherwise, the electors of any unit of local government which has adopted a new alternative form of local government, charter, or consolidation plan may not vote on the question of changing the form of local government until 3 years after the new local government becomes effective, but the electors may vote on amendments to the alternative form, charter, or consolidation plan.

Section 22. Effective date of alternative plan or amendment. (1) An alternative plan of local government approved by the electors takes effect when the new officers take office, except as otherwise provided in any charter or consolidation plan. A consolidation or merger plan adopted by the electors takes effect in the same manner.

(2) Provisions creating offices and establishing qualifications for office under any apportionment plan become effective immediately for the purpose of electing officials.

HB 851

(3) An amendment to an existing plan of government becomes effective at the beginning of the local government's fiscal year commencing after the election results are officially declared.

Section 23. General transition provisions. (1) The governing body shall prepare an advisory plan for orderly transition to a new plan of local government. The transition plan may propose necessary ordinances, plans for consolidation of services and functions, and a plan for reorganizing boards, departments, and agencies.

(2) The governing body of a local government may enact and enforce ordinances to bring about an orderly transition to the new plan of government, including transfer of powers, records, documents, properties, assets, funds, liabilities, or personnel. These ordinances are to be consistent with the approved plan and necessary or convenient to place it into full effect. Whenever a question arises concerning transition which is not provided for, the governing body may provide for the transition by ordinance, rule, or resolution not inconsistent with law.

Section 24. Transition provisions affecting personnel. (1) The members of the governing body holding office on the date the new plan of government is adopted by the electors of the local government continue in office and in the performance of their duties until the governing body

authorized by the plan has been elected and qualified, whereupon the prior governing body is abolished.

(2) All other employees holding offices or positions, whether elective or appointive, under the government of the county or municipality continue in the performance of the duties of their respective offices and positions until provisions are made for the performance or discontinuance of the duties or the discontinuance of the offices or positions.

(3) A charter or a petition or resolution proposing an alteration to an existing form of local government may provide that existing elected officers shall continue in office until the end of the term for which they were elected or may provide that existing elected officers shall be retained as local government employees until the end of the term for which they were elected and their salaries may not be reduced.

Section 25. Treatment of existing ordinances and resolutions. (1) All ordinances and resolutions in effect at the time the new form of government becomes effective continue in effect until repealed or amended in the manner provided by law.

(2) Within 2 years after ratification of a consolidation plan, the governing body of the consolidated local government shall revise, repeal, or reaffirm all

rules, ordinances, and resolutions in force within the participating county and municipalities at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation remains in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

Section 26. Election of new officials. (1) Within 20 days after an election at which the new plan of government is approved by the electors, the governing body of the local government shall meet and order a special primary and general election for the purpose of electing the officials required by the new form of government. The elections for officials may be held in conjunction with any other election.

(2) The order shall specify a date for the primary election not more than 120 days or less than 20 days after the election approving the new form and a date for the general election 60 days after the primary.

Section 27. Organization of new governing body. (1) The first meeting of a new governing body for a new plan of government shall be held at 10 a.m., 60 days after the election of the new officers. At that time, newly elected members shall take the oath of office prior to assuming the

duties of office.

(2) If the terms of the commissioners are to be overlapping, they shall draw lots to establish their respective terms of office.

Section 28. Codification. It is intended that sections 1 through 27 be codified as an integral part of Title 7, chapter 3, part 1, and the provisions of Title 7, chapter 3, apply to sections 1 through 27.

Section 29. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

HB 851

FEBRUARY 19, 1979
PROCEEDINGS OF THE
LOCAL GOVERNMENT COMMITTEE
HOUSE OF REPRESENTATIVES

The meeting was called to order by Chairman Hershel Robbins Monday evening, February 19, 1979, on adjournment of the House. The secretary called the roll and found a majority of the members present. Those absent were Representative Donaldson, Representative Gould, Representative Hurwitz, Representative Kessler and Representative McBride. All other members were present.

The purpose of the meeting was to hold hearings and to hold executive session.

HOUSE BILL 391: Presented by Representative Hemstad. Representative Hemstad presented the bill. This bill would clarify the manner of placing people on local boards who live in the area of those boards. At present, certain businesses would have more vote or no vote in changing of subdivisions or entering shopping centers. This would allow for better members to be represented on boards. This would place a limit so that people on the boards could not come from outside the four and a half mile jurisdiction. She then read a prepared statement, which is attached to the testimony.

There were no proponents present and no opponents present.

There were several questions by committee members and hearing was then closed on House Bill 391.

HOUSE BILL 404: Presented by Representative Sales. Representative Sales stated that this bill was presented because of a situation of people finding roads which have previously considered private roads are now becoming public roads. Because of increased traffic the bridges are falling and they are facing increased maintenance.

There were no proponents present and no opponents present. Comments from the committee were that this would be a good bill. Hearing was then closed on House Bill 404.

HOUSE BILL 851: Representative Spilker presented the bill and stated that there had been problems with the courts as to whether there should be mandatory review or optional review of forms of local government. She pointed to Section 3 on page 3, which would allow for recommendations from the local governing body. She also pointed out that this would require petitions and special requirements on Section 11, page 8, as to determinations to be made.

House Bill 851: (continued)
Also included were ways of changing local government. Page 10 has requirements for the actual election.

Chairman Robbins then called for proponents.

Mr. Brooke, representing Missoula, stated that they were in favor, that this would fill the needs which are varied for county and city governments. The Missoula County Commissioners endorsed the bill.

Mr. David Hunter, from Helena, stated they would like an amendment regarding the election portion of the bill. He referred to the portion of the bill which prohibited commission forms of government from adopting certain provisions. He also stated he thought this was a good bill.

There were no further proponents. There were no opponents present. There were then questions from committee members.

Representative Gould inquired as to whether there would be a time limit on people to sign the petitions. There was also reference to the fact that changes could not be made for three years after adoption of a different form. Representative South then inquired as to what had happened to the bill that had been drafted in 1974, which would give cities and counties an opportunity to change their forms of government. There was discussion by the committee that this legislation had not been passed. Hearing was then closed on House Bill 851.

HOUSE BILL 490: John Bell, representing the county clerks and recorders in the absence of the representative, stated this would increase the cost that could be charged for an applicant for a birth or death certificate. There were no proponents or opponents present. Hearing was then closed on House Bill 490.

HOUSE BILL 698: Presented by Representative Howard Porter, District 65. Representative Porter stated he would like to call on Dan Mizner from the League of Cities and Counties to present the bill. He stated it had been requested by some of the cities. It relates to the appointment of treasurers and engineers in certain forms of government. This would give authority for these positions to be appointed in possibly 25 to 30 cities. Also to be appointed would be a chief engineer. Many of the smaller areas don't have the money to support having some of these positions elected. There were no proponents present for the bill, as well as no opponents.

There were then questions from committee members. Representative Pistoria stated he didn't feel there was a need for the bill. The authority was already given under mayor-

House Bill No. 662 (continued)
David Goss of Billings, representing their city commissioners, also spoke as an opponent stating they felt they needed the association to fairly represent them.

Bill Bigspring, county commissioner, also spoke stating he hoped the bill would be tabled.

There were no further opponents and Representative Brand then gave closing remarks. There followed questions from committee members. Representative Azzara stated he felt that belonging to these lobbying organizations didn't help, that possibly it would be more assistance if local government people would travel to Legislature and bring their views. He then asked Dan Mizner to speak. Mr. Mizner stated they had been doing the small things for the cities and that they were unable to come over on all the little bills. That is the purpose of this organization.

Hearing was then closed on House Bill 662.

The committee then went into Executive Session.

HOUSE BILL 391: Representative Sales moved do pass on House Bill 391. Question was called on the motion. All voted "aye" except Representatives Gould, Donaldson and Oberg. Motion carried. House Bill 391 was given do pass.

HOUSE BILL 404: Representative Sales moved do pass on House Bill 404. There was no discussion by the committee Question was called. Representatives Gould, Donaldson, Moore and Oberg voted no. Motion carried that House Bill 404 do pass.

HOUSE BILL 490: Representative Reichert moved that House Bill 490 do pass. Vote was called. All voted "aye" except Representatives Gould and Donaldson and Oberg. Motion carried. House Bill 490 do pass.

HOUSE BILL 698: Representative Reichert moved do pass. Vote was called. All voted "aye" except Representatives Pistoria and Vinger. Motion carried that House Bill 698 do pass.

HOUSE BILL 851: Representative Waldron moved do pass. There was a short discussion by the committee, with Representative Reichert stating she felt this was necessary bill. Question was called. All voted "aye" except Representative Vinger. Motion carried that House Bill 851 do pass.

HOUSE BILL 662: Representative South moved do not pass.

W. G. Gilbert III, of the Montana County Attorneys Association, stated that this bill will give the counties the flexibilities to make the adjustment they need to make. This would be the ultimate option for counties. He stood in support of the bill.

Tom Honzel, of the Montana County Attorneys Association, stated that this is a very important bill. Very little has been done since the original act was enacted. The work load is getting larger all the time. Needs vary from county to county and this bill will give them the flexibility they need.

There were no opponents to the bill. Representative Hand made the closing remarks. He stated that he feels this is a very necessary bill for the counties.

CONSIDERATION OF HOUSE BILL 851: Representative Bobby Spilker of District 32, chief sponsor of HB 851, gave a brief resume. This bill is an act to provide procedures for alteration of existing forms of local governments. Representative Spilker stated that local governments are not able to change their form of government without the vote of the people. House Bill 851 addresses the procedural question regarding changing forms of local government.

David Hunter, representing the City of Helena, stated his support of the bill. His cities have self-governing powers. This bill would give the procedural mechanism and also give the county commissioners the power to do this.

Jim Nugent, representing the City of Missoula, stated that HB 851 will provide the procedures required by the Montana Constitution in Article XI, Section 3, in 1972. (See attachment.)

Eva Spaulding, of the League of Women Voters, stated that the League recognizes that local government entities have varied and different needs. This bill will allow changes in the local government in the areas and in the way the majority of the voters want it. (See attachment.)

Dan Mizner, of the League of Cities and Towns, stated his support of the bill. This bill corrects the mechanisms to change the forms of governments.

There were no opponents.

Representative Spilker made the closing remarks. She stated that this is all new language and just clarifies. At the present time, there is no procedure in the law to allow cities to put it to a vote of the people.

HOUSE BILL 81: The hearing on HB 81 will be rescheduled for Thursday, March 22, because of lack of time

DISPOSITION OF HOUSE BILL 682: This bill is in regard to full-time county attorneys being allowed.

A motion was made by Senator Rasmussen that HB 682 "BE CONCURRED IN". Motion carried with all members voting "yes" with the exception of Senator O'Hara who abstained.

ACTION ON HOUSE BILL 851: This bill is in regard to providing procedures for alteration of existing forms of local governments.

Senator Watt made a motion that the bill be amended to read 2 years.

A substitute motion was made by Senator Lockrem that the bill be amended to read three years. Motion carried.

CONSIDERATION OF HOUSE BILL 704: This bill is in regard to the allocation of state funds for public transportation.

David Hunter, from the City of Helena, stated that the formula changes the money. The cities have gotten together and worked out a formula. The money will still come to the cities. Mr. Hunter stated that the cities cannot budget when they do not know how much money they will get.

ACTION ON HOUSE BILL 382: This bill is in regard to allowing private fire protection companies to continue to provide fire protection services to an area that has been annexed or incorporated.

A motion was made by Senator Lockrem that the Committee reconsider their previous actions on HB 382. Motion carried.

A motion was made by Senator Lockrem that HB 382 "BE CONCURRED IN". Motion was withdrawn.

ADJOURN: With no further business, the meeting was adjourned at 2:55. The next meeting will be held on Wednesday at 12:00 noon for executive action.

George McCallum

CHAIRMAN, Senator George McCallum

SUPPORT FOR HB 851 March 20, 1979

The League of Women Voters of Montana supports HB 851, An act to provide procedures for alteration of existing forms of local government.

This bill is a response to the Constitution of Montana, Article XI, LOCAL GOVERNMENT, Section 3. Forms of Government, (1) (second sentence), "The Legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question."

This bill spells out the procedures and process of changing a form of government in precise and detailed terms.

The League recognizes that local government entities have varried and different needs. This bill will allow changes in the local government in the areas and in the way the majority of the voters want it.

Presented by
Eva Spaulding

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

March 21, 1979

The meeting of the Local Government Committee was called to order by Chairman George McCallum on Wednesday, March 21, 1979 at 12 noon in Room 405 of the State Capitol Building.

ROLL CALL: All members were present with the exceptions of Senators Lockrem and Rasmussen, who were excused.

Dennis Taylor, staff researcher was also present.

DISPOSITION OF HOUSE BILL 125: This bill is in regards to establishing the Montana State-local revenue sharing program.

Senator Watt stated he felt that this bill should be moved to the Taxation Committee.

Senator Thomas stated that perhpas it shold be moved to either Finance and Claims or Appropriations.

It was decided to move the bill to the Taxation Committee.

DISPOSITION OF HOUSE BILL 244: This bill is in regards to amending the Montana Major Facility Siting Act.

A motion was made by Senator Thomas to accept the proposed amendments. (See attached Committee Report.) Motion carried.

A motion was made by Senator O'Hara that House Bill 244 BE CONCURRED IN, as amended. Motion carried with all voting "yes" except Senator Story who voted "no". Senator Conover will carry the bill on the floor.

DISPOSITION OF HOUSE BILL 851: This bill provides a procedure for alteration of existing forms of local governments.

A motion was made by Senator Story to accept the proposed amendements of the Department of Community Affairs. Counties have to use a petition, otherwise, things could be railroaded through. The petition is a way of protection for the people.

A motion was made by Senator Story to amend the bill to remove the area dealing with a resolution.

A substitute motion was made by Senator Watt to leave the area dealing with a change by resolution. Motion failed. (See attachment.)

A vote was taken on Senator Story's motion. The motion carried. (See attachment.)

A motion was made by Senator Story to amend the bill with regards to city-county consolidation. (See attached Committee report #3.) Motion was carried with everyone voting "yes" except Senator Rasmussen who abstained and Senator Lockrem who voted "no".

A motion was made by Senator Watt that House Bill 851 BE CONCURRED IN, as amended.

Senator O'Hara asked if this bill was really needed. David Hunter, representing the City of Helena, stated that a number of local governments want to put their current form of governent up to a vote of the people and this bill would take care of the problem.

Senator McCallum stated that according to the constitution, every ten years it must be voted on for an alternate form of government. This would allow counties to initiate a change of government without waiting for the ten years.

Senator Watt stated he feels that it is good for the people to have a choice.

Senator Peterson stated he like the idea of having to wait for three years.

A vote was taken on Senator Watt's motion to concurr with the House on this bill. Motion carried.

DISPOSITION OF HOUSE BILL 365: This bill deals with annexation and elections.

A motion was made by Senator Thomas that House Bill 365 BE CONCURRED IN.

A motion was made by Senator Lockrem to amend the bill on page 1, lines 14 and 24, to change the "more than" to "or more". Motion carried.

A motion was made by Senator Watt that House Bill 365 BE CONCURRED IN, as amended. Motion carried. (See attachment.)

DISCUSSION ON HOUSE BILL 366: This bill is in regards to streamlining annexation methods.

There are four distinct procedures for annexation. This bill amends the Planned Coummunity Developement Act of 1974. Discussion was held regarding the problem facing Missoula concerning annexation.

A motion was made by Senator Watt that the bill BE CONCURRED IN.

STANDING COMMITTEE REPORT

March 21, 1979

MR. President:

We, your committee on Local Government

having had under consideration House Bill No. 351

Spilker (Watt)

Respectfully report as follows: That House Bill No. 351,

third reading bill (Corrected Copy), be amended as follows:

1. Page 3, line 8.
Strike: ":"

2. Page 3, line 9.
Following: line 8
Strike: "(1)"
Following: "electors"
Strike: remainder of lines 9 and 10 in their entirety
Insert: "."

3. Page 3, line 24.
Following: "alteration."
Insert: "whenever county-municipal consolidation is proposed, the petition must be signed by at least 15% of the electors residing within the municipality or municipalities proposed to be consolidated and 15% of the electors residing in the remainder of the county."

XXXXXX

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

4. Page 3, line 25.
Strike: lines 25 through line 5 on Page 4 in their entirety
Renumber: Subsequent sections

5. Page 4, line 7.
Strike: "or resolution"

6. Page 4,line 17.
Strike: "CIRCULATED OR A RESOLUTION"

7. Page 4, line 20.
Strike: "or resolution"

8. Page 5, line 3.
Strike: "or resolution"

9. Page 5, line 4.
Strike: "or resolution"

10. Page 6, line 5.
Strike: "or resolution"

11. Page 7, line 9.
Strike: "or resolution"

12. Page 7, line 14.
Strike: "or resolution"

13. Page 8, line 18.
Strike: "or resolution"

14. Page 8, line 24.
Strike: "or resolution"

15. Page 8, line 25.
Strike: "or a resolution"

16. Page 9, line 2.
Strike: "or resolution"

17. Page 9, line 5.
Strike: "30 days of adoption of a resolution and within"

18. Page 9, line 6.
Following: "of"
Strike: "a"
Insert: "the"

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

19. Page 9, line 7.
Strike: "and resolution"

20. Page 9, line 8.
Strike: "or resolution"

21. Page 9, line 16.
Strike: "or resolution"

22. Page 9, line 22.
Strike: "or"

23. Page 9, line 23.
Strike: "resolution"

24. Page 11, line 11.
Strike: "or resolution"

25. Page 11, line 18.
Following: "by"
Strike: "("
Following: "people"
Strike: remainder of lines 18 and 19 in their entirety
Insert: "."

26. Page 12, line 8.
Strike: "or resolution"

27. Page 14, line 14.
Following: "has"
Strike: "adopted a new alternative "
Insert: "voted upon the question of changing the"

28. Page 14,line 15.
Following: "plan"
Insert: "or upon the question of amending the alternative form, charter, or consolidation plan"

29. Page 14, line 16.
Following: "changing"
Insert: "or amending"

30. Page 14, line 17.
Following: "government"
Strike: "until"
Insert: "for"
Following: "years"
Strike: remainder of lines 17 through line 19 in their entirety
Insert: "."

And, as so amended, BE CONCURRED IN

George McCallum Chairman.

STATE PUB. CO.
Helena, Mont.

HB 0851/04

HOUSE BILL NO. 851

INTRODUCED BY SPILKER, WALDRON, REICHERT, H. ROBBINS, AZZARA, BARDANOUVE, PALMER, WATT, RASMUSSEN, McCALLUM, DONALDSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE PROCEDURES FOR ALTERATION OF EXISTING FORMS OF LOCAL GOVERNMENT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. The purpose of [this act] is to provide procedures for alteration of existing forms of local government.

Section 2. Definitions. As used in [this act], unless the context indicates otherwise, the following definitions apply:

(1) "Authority" means:

(a) a municipal or regional airport authority as provided in Title 67, chapter 11;

(b) a conservancy district as provided in Title 85, chapter 9;

(c) a conservation district as provided in Title 76, chapter 15;

(d) a drainage district as provided in Title 85, chapter 8;

(e) an irrigation district as provided in Title 85, chapter 7;

(f) a hospital district as provided in Title 7, chapter 34, part 21;

(g) a flood control and water conservation district as provided in Title 76, chapter 5, part 11;

(h) a county water and sewer district as provided in Title 7, chapter 13, part 22; or

(i) an urban transportation district as provided in Title 7, chapter 14, part 2.

(2) "Finance administrator" means the individual responsible for the financial administration of the local government and generally means the county or city treasurer or town clerk unless the alternative form or governing body specifies a different individual.

(3) "Governing body" means the commission or the town meeting legislative body established in the alternative form of a local government under Title 7, chapter 3, parts 1 through 6.

(4) "Local improvement district" means an improvement district in which property is assessed to pay for specific capital improvements benefiting the assessed property.

(5) "Records administrator" means the individual responsible for keeping the public records of the local government and generally means the county, city, or town clerk unless the alternative form or governing body

REFERENCE BILL: Includes Free Joint Conference Committee Report Dated 4/16/99

specifies a different individual.

(6) "Subordinate service district" means a special district within a local government in which certain services are provided and in which taxes may be levied to finance the services.

Section 3. Alteration of existing forms of local government. An alteration of an existing form of local government may be proposed by:

~~(1)~~--a petition of the electors; ~~or~~

~~(2)--a resolution of the governing body~~.

Section 4. Election procedure. Except as otherwise provided in [this act], each election under [this act] is conducted in the same manner as an election involving ballot issues or of local officials.

Section 5. Petition for alteration. (1) A petition for the alteration of an existing form of local government may be presented to the governing body of the local government. The petition must meet the requirements of [sections 8 through 11].

(2) The petition must be signed by ~~a~~ AT least 15% of the electors of the local government REGISTERED AT THE LAST GENERAL ELECTION, and upon receipt of the petition the governing body shall call an election, as provided for in [sections 15 through 17], on the proposed alteration. WHENEVER COUNTY-MUNICIPAL CONSOLIDATION IS PROPOSED, THE

PETITION MUST BE SIGNED BY AT LEAST 15% OF THE ELECTORS RESIDING WITHIN THE MUNICIPALITY OR MUNICIPALITIES PROPOSED TO BE CONSOLIDATED AND 15% OF THE ELECTORS RESIDING IN THE REMAINDER OF THE COUNTY.

~~Section 6.--Resolution--for--alteration.---A--governing body-of-a-local-government-may-by-resolution-submit--to--the electors---of---the--local--government--a--question--on--the alteration-of-the-existing-form-of-the-local-government.-The resolution-must-meet-the-requirements-of-[sections-8-through 11].~~

Section 6. Permissible recommendations. (1) A petition ~~or-resolution~~ proposing to alter an existing form of county government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(c) draft a charter;

(d) recommend municipal-county consolidation or amendments to an existing consolidation; or

(e) in cooperation with a ~~study--commission~~ SIMILAR PETITION ~~CIRCULATED-OR-A-RESOLUTION~~ CALLING FOR AN ELECTION ON COUNTY MERGER ~~ADOPTED-BY-THE-GOVERNING-BODY~~ CIRCULATED in an adjoining county, recommend county merger.

(2) A petition ~~or--resolution~~ proposing to alter an

existing form of municipal government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 7;

(c) draft a charter; or

(d) recommend disincorporation.

Section 7. Requirements for petition ~~or resolution~~. A petition ~~or resolution~~ proposing an alteration of an existing form of local government must contain:

(1) a certificate containing the "plan of government" of the existing form of local government;

(2) a certificate containing the "plan of government" of the proposed new form of local government or amendments to the existing plan;

(3) a certificate containing the "plan of apportionment" of commissioner districts if districts are contained in the "plan of government"; AND

~~(4) a certificate establishing the date of the special election at which the alternative form of government shall be presented to the electors and a certificate establishing the form of the ballot question or questions;~~

~~(5) a certificate establishing the dates of the first primary and general elections if the proposal is approved and establishing the effective date of the proposal if~~

~~approved; and~~

~~(6)~~(4) a comparison of the existing plan and proposed plan of local government, including, if desired, a statement of the strengths and weaknesses of the existing and proposed plans of local government, information that supports the adoption of the proposed plan, and information that supports retention of the present plan.

Section 8. Special requirements if consolidation recommended. (1) Whenever county-municipal consolidation is recommended, a petition ~~or resolution~~, in addition to the material required in [section 8], must contain a consolidation plan which:

(a) provides for adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service;

(b) provides for establishment of subordinate service districts;

(c) provides for the transfer or other disposition of property and other rights, claims, assets, and franchises of the local governments consolidated under its proposal;

(d) provides the official name of the consolidated local government; and

(e) (i) provides for the transfer, reorganization, abolition, adjustment of boundaries, or absorption of existing boards, subordinate service districts, local

improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and nonconsolidated municipalities; or

(iii) grants the legislative body of the consolidated government the authority to transfer, reorganize, abolish, adjust boundaries, or absorb existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and nonconsolidated municipalities, with or without referendum requirements.

(2) The consolidation plan may include other provisions that are consistent with state law.

(3) Whenever amendments to an existing consolidation plan are recommended, a petition ~~or resolution~~ must contain a certificate containing amendments to the consolidation plan.

Section 9. Special requirements if county merger recommended. (1) Whenever county merger is recommended, a petition ~~or resolution~~, in addition to the material required by [section 8], must contain a consolidation plan which:

(a) provides for adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service;

(b) provides for establishment of subordinate service districts;

(c) provides for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative plan;

(d) provides the official name of the consolidated local government; and

(e) (i) provides for the transfer, reorganization, abolition, adjustment of boundaries, or absorption of existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and incorporated municipalities; or

(ii) grants the legislative body of the consolidated government the authority to transfer, reorganize, abolish, adjust boundaries, or absorb existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and incorporated municipalities, with or without referendum requirements.

(2) The consolidation plan may include other provisions that are consistent with state law.

Section 10. Special requirements if municipal disincorporation recommended. Whenever municipal disincorporation is recommended, a petition ~~or resolution~~, in addition to the material required by [section 8], must contain:

(1) a certificate of disincorporation instead of a plan of government; and

(2) a recommended plan of disincorporation.

Section 11. Filing of petitions ~~and resolutions~~. (1) Two copies of a petition ~~or a resolution~~ shall be filed with the department of community affairs.

(2) One copy of a petition ~~or resolution~~ shall be filed with the local government records administrator.

(3) The filings required by this section shall be done within ~~30 days of adoption of a resolution and within~~ 45 days of submission of a THE petition.

Section 12. Availability of petitions ~~and resolutions~~. (1) Sufficient copies of a petition ~~or resolution~~ proposing alterations to an existing form of local government must be made available to the public for inspection at convenient locations and at reasonable hours to provide all interested persons an opportunity to review the recommendations and documents. The copies must be available no later than 30 days prior to an election on the recommendations if such an election is to be held. The local government may distribute copies of a petition ~~or resolution~~ to the electors or residents of the local government.

(2) The cost of preparing the copies needed to meet the requirements of this section shall be borne by the affected local government.

Section 13. Publication of summary and comparison. (1) A summary of the recommendations contained in a petition ~~or resolution~~ proposing alteration of an existing form of local government must be published at least twice in a newspaper of general circulation in the local government. Whenever an election on the recommendations is to be held, publication must be made during the 2 weeks preceding the election.

(2) The summary must contain a description of the recommendations, a comparison of the existing and proposed forms of government, and a list of locations where the full proposal may be seen or obtained.

(3) The cost of publication required by this section shall be borne by the affected local government.

Section 14. Election on alternative form. (1) The governing body shall call a special election on the question of an alternative form of government to be held within 120 days of the date of filing with the records administrator under [section 12]. The special election may be held in conjuction with any other election. The records administrator shall prepare and print notices of the special election.

(2) The cost of the election shall be paid for by the local government.

(3) (a) The affirmative vote of a simple majority of those voting on the question is required for adoption.

(b) In any election involving the question of consolidation, each question shall be submitted to the electors in the county and requires an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There is no requirement for separate majorities in local governments voting on consolidation.

(c) In any election involving the question of county merger, the questions shall be submitted to the electors in the counties affected and requires a majority of the votes cast on the questions in each affected county for adoption.

(d) If the electors disapprove the proposed new form of local government, amendments, or consolidation plan, the local government retains its existing form.

Section 15. General ballot requirements. (1) The question of adopting an alteration of an existing form of government proposed by petition ~~or--resolution~~ shall be submitted to the electors in substantially the following form:

Vote for one:

FOR adoption of the (self-government charter, amendment to an existing charter, or plan of government) proposed for (insert name of local government) proposed by (petition of the people or ~~resolution-of-the-governing-body~~).

FOR the existing form of government.

(2) The whole number of ballots shall be divided into two equal sets. No more than one set may be used in printing the ballot for use in any one precinct and all ballots furnished for use in one precinct shall be identical. The existing plan of government shall be printed as the first item and the proposed plan as the second item on half of the ballots and the proposed form as the first item and the existing form as the second item on the other half of the ballots. If the local government consists of only one precinct, the existing plan shall be listed first on the ballot.

Section 16. Treatment of suboptions for alternative forms. (1) No petition ~~or--resolution~~ recommendation may involve more than three separate suboptions, and no suboption may contain more than two alternatives. If a suboption is submitted to the voters, only the ballot alternatives within that suboption receiving the highest number of affirmative votes are considered approved and included in the alternative form of government.

(2) A proposed plan shall be submitted to the voters as a single question, except that the suboptions within the alternative plan of local government authorized in Title 7, chapter 3, parts 1 through 7, and the suboptions authorized in a charter may be submitted to the electors as separate questions. The question of adopting a suboption shall be

submitted to the electors in substantially the following form:

Vote for one:

A legal officer (who may be called the "county attorney"):

Shall be elected for a term of 4 years.

Shall be appointed for a term of 4 years by the chairman of the local governing body.

Section 17. Effect of adoption of new form of government. The adoption of a new plan of government does not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government.

Section 18. Filing of approved plan. (1) A copy of the existing or proposed plan of government ratified by the voters and any apportionment plan or consolidation or merger plan shall be certified by the chairman of the governing body and filed with the department of community affairs, the county records administrator, and the municipal records administrator if it is a municipal plan.

(2) The approved plan filed with the department of community affairs is the official plan and is a public record open to inspection by the public and judicially noticeable by all courts.

Section 19. Judicial review. Judicial review to

determine the validity of the procedures whereby any charter or alternative plan of government is adopted may be initiated by petition in district court of 10 or more registered voters of the local government brought within 60 days after the election at which the charter or plan of government, revision, or amendment is approved. If no petition is filed within that period, compliance with all the procedures required by [this act] and the validity of the manner in which the charter or plan of government was approved is conclusively presumed. It is presumed that proper procedure was followed and all procedural requirements were met. The adoption of a charter or plan of government may not be considered invalid because of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption.

Section 20. Three-year moratorium. Unless the constitution requires otherwise, the electors of any unit of local government which has ~~adopted a new alternative~~ VOTED UPON THE QUESTION OF CHANGING THE form of local government, charter, or consolidation plan OR UPON THE QUESTION OF AMENDING THE ALTERNATIVE FORM, CHARTER, OR CONSOLIDATION PLAN may not vote on the question of changing OR AMENDING the form of local government ~~until~~ FOR 3 years~~, after the new local government becomes effective, but the electors may~~

~~vote on amendments to the alternative form, charter, or consolidation plan.~~

Section 21. Effective date of alternative plan or amendment. (1) An alternative plan of local government approved by the electors takes effect when the new officers take office, except as otherwise provided in any charter or consolidation plan. A consolidation or merger plan adopted by the electors takes effect in the same manner.

(2) Provisions creating offices and establishing qualifications for office under any apportionment plan become effective immediately for the purpose of electing officials.

(3) An amendment to an existing plan of government becomes effective at the beginning of the local government's fiscal year commencing after the election results are officially declared.

Section 22. General transition provisions. (1) The governing body shall prepare an advisory plan for orderly transition to a new plan of local government. The transition plan may propose necessary ordinances, plans for consolidation of services and functions, and a plan for reorganizing boards, departments, and agencies.

(2) The governing body of a local government may enact and enforce ordinances to bring about an orderly transition to the new plan of government, including transfer of powers,

records, documents, properties, assets, funds, liabilities, or personnel. These ordinances are to be consistent with the approved plan and necessary or convenient to place it into full effect. Whenever a question arises concerning transition which is not provided for, the governing body may provide for the transition by ordinance, rule, or resolution not inconsistent with law.

Section 23. Transition provisions affecting personnel. (1) The members of the governing body holding office on the date the new plan of government is adopted by the electors of the local government continue in office and in the performance of their duties until the governing body authorized by the plan has been elected and qualified, whereupon the prior governing body is abolished.

(2) All other employees holding offices or positions, whether elective or appointive, under the government of the county or municipality continue in the performance of the duties of their respective offices and positions until provisions are made for the performance or discontinuance of the duties or the discontinuance of the offices or positions.

(3) A charter or a petition or resolution proposing an alteration to an existing form of local government may provide that existing elected officers shall continue in office until the end of the term for which they were elected

or may provide that existing elected officers shall be retained as local government employees until the end of the term for which they were elected and their salaries may not be reduced.

Section 24. Treatment of existing ordinances and resolutions. (1) All ordinances and resolutions in effect at the time the new form of government becomes effective continue in effect until repealed or amended in the manner provided by law.

(2) Within 2 years after ratification of a consolidation plan, the governing body of the consolidated local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county and municipalities at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation remains in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

Section 25. Election of new officials. (1) Within 20 days after an election at which the new plan of government is approved by the electors, the governing body of the local government shall meet and order a special primary and general election for the purpose of electing the officials

required by the new form of government. The elections for officials may be held in conjunction with any other election.

(2) The order shall specify a date for the primary election not more than 120 days or less than 20 days after the election approving the new form and a date for the general election 60 days after the primary.

Section 26. Organization of new governing body. (1) The first meeting of a new governing body for a new plan of government shall be held at 10 a.m., 60 days after the election of the new officers. At that time, newly elected members shall take the oath of office prior to assuming the duties of office.

(2) If the terms of the commissioners are to be overlapping, they shall draw lots to establish their respective terms of office.

Section 27. Codification. It is intended that sections 1 through 27 be codified as an integral part of Title 7, chapter 3, part 1, and the provisions of Title 7, chapter 3, apply to sections 1 through 27.

Section 28. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the

invalid applications.

-End-